IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 10274 of 2007(W)

OS.117/2001 of PRINCIPAL SUB COURT, PALAKKAD

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PETITIONER:

VIJAYALAKSHMY, D/O.GOPALAN,
GANESHPURAM, PAMPAMPALLAM,
PALGHAT.

BY ADV. SRI.T.C.MOHANDAS
SRI.T.M.SUNIL
SMT.S.CHITHRA
SRI.A.S.BRIJESH
SMT.S.RENUKA

RESPONDENTS:

1. DANDAPANI, S/O.SUBBAYYA KOUNDER.

2. NALLAMMAL, W/O.DANDAPANI,
(BOTH RESPONDENTS ARE RESIDING AT
KOZHIPATHI, VANNAMADA, PALGHAT).

BY ADV. SMT.P.K.RADHIKA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 10274/07

PETITIONER'S EXHIBITS:

EXT. P1	**TRUE COPY OF PLAINT IN OS 117/01 ON THE FILE OF THE SUB COURT, PALGHAT DT. 29.3.01**
EXT. P2	**TRUE COPY OF IA 706/017 IN OS 117/01 DT. 13.3.07**
EXT. P3	**TRUE COPY OF ORDER IN IA 706/017 IN OS 117/01 DT. 14.3.07**

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 10274 of 2007 W

JUDGMENT

Heard arguments of counsel on both sides.

2. The challenge in this writ petition is against Exhibit P3 order passed by the Sub Judge, Palakkad, dismissing I.A.No.706/07 in O.S.No. 117/01, refusing to allow impleadment of the wife of the first respondent/defendant as a co-defendant in the partition suit filed by the petitioner/ plaintiff, who is their daughter-in-law. The reason for the dismissal of the impleadment application filed by the petitioner/plaintiff is that it is filed highly belated, at the fag end of the trail of the case.

3. Counsel for the respondents contends that even in the written statement filed about four years back, a contention had been raised that the party now sought to be impleaded, namely, Nallammal, is entitled to right in the property and that on the basis thereof Issue No.3 is raised in

the suit, as to whether the suit is bad for non-joinder of Nallammal, the mother of deceased Balasubramanian.

4. Both sides submit that despite raising of that issue, the court below has not posted the case for steps, if any, to cure the alleged defect of non-joinder of necessary parties. When no such specific posting is given, as mandated by the procedure, it cannot be said that the party was negligent in taking steps to implead the additional party and therefore, the suit deserves a dismissal. It is not in dispute that in the event of Exhibit P3 order being upheld, the suit, necessarily, may have to be dismissed for the defect of non-joinder of necessary parties. In the circumstances, it is only proper that an opportunity is afforded to the petitioner to cure the defect of non-joinder of necessary parties, allowing Nallammal, the wife of the first respondent, being impleaded as an additional defendant in the suit, in reversal of Exhibit P3 order.

5. In the result, I set aside Exhibit P3 order and allow I.A.No.706/07 in O.S.No.117/01 on the file of the Sub Court, Palakkad, granting leave to Nallammal, the wife of the first respondent, being impleaded as additional second defendant. It is submitted that the suit now stands posted for judgment to 3.4.2007. The court below shall re-open the case and afford necessary opportunity for the additional party to be impleaded, to enable written statement, if any, that she wants to file and let in such further evidence as she may desire to adduce in the case. If need be, the court below can permit the petitioner also to let in further evidence. It goes without saying that being a part heard matter, trial of the case has to be expedited.

This writ petition is, thus, allowed.

30th March, 2007 (K.P.Balachandran, Judge)

tkv